

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF D. F. BAER AND)
CO.,)
)
Appellant,)
)
vs.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY, STATE OF)
WASHINGTON,)
)
Respondent.)
)

PCHB No. 34

FINDINGS OF FACT, CONCLUSIONS
AND ORDER

This matter came on for hearing before the Pollution Control Hearings Board (Walt Woodward, hearing officer) at 9 a.m., May 17, 1971, in the King County Administration Building, Seattle. Appellant was represented by Donald F. Baer; respondent was represented by its counsel, Keith McGoffin.

This matter is an appeal from a \$250 civil penalty levied by respondent against appellant for an alleged violation of Section 9.02 of Regulation 1 of the Puget Sound Air Pollution Control Agency.

Witnesses were sworn and testified and exhibits were admitted.

On the basis of testimony and exhibits, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I.

Appellant owned and operated an alder finishing

plant and sawmill at separate locations in Monroe, Snohomish County, Washington, at the time of the alleged violation. Both concerns were in financial difficulty; appellant no longer operates them.

II.

It had been the practice of appellant to burn short alder "ends," but after an order from Puget Sound Air Pollution Control Agency in July, 1970 to cease such practice, appellant did no open burning until the alleged violation.

III.

On November 27, 1970, respondent's Everett office received a telephone call from someone connected with appellant's firms for a permit to burn alder waste. Lou Peterson, inspector for respondent, went to Monroe, conferred with Mr. Baer, denied the permit and left Monroe for Sultan on another agency matter. About an hour later, Mr. Peterson returned to Monroe on his way home and saw a plume of smoke from the pile of alder waste for which he earlier had denied a burning permit. He took two photographs of the fire (respondent's Exhibits 1 and 2).

IV.

On November 30, 1970, respondent issued its Notice of Violation No. 3371 against appellant, citing an open fire on November 27, 1970, in violation of Section 9.02 of Regulation 1 of Puget Sound Air Pollution Control Agency. The notice invited appellant to inform the Everett office of the Agency within 10 days of corrective action to be taken to prevent continued or

recurrent violation.

V.

Failing to receive any written communication from appellant, the Puget Sound Air Pollution Control Agency, on December 29, 1970, assessed a civil penalty (Notice of Civil Penalty No. 71) of \$250, the maximum allowable, against respondent.

VI.

Mr. Baer left Monroe to go to his home in Kent shortly after the conference with Mr. Peterson and was not aware of the fire until the next day. Mr. Baer, fully aware of Puget Sound Air Pollution Control Agency burning regulations did not start the fire. The fire was started without Mr. Baer's knowledge by an employee, contrary to an order by Mr. Baer to do no burning until Mr. Peterson's superior officer could be contacted at a later date in the Everett office of the Agency. Mr. Baer did not respond in writing to respondent's Notice of Violation because of the general confusion attendant to appellant's deteriorating financial situation.

In view of these Facts, the Pollution Control Hearings Board reaches these

CONCLUSIONS

I.

Appellant was in violation of Section 9.02 of Regulation 1 of the Agency.

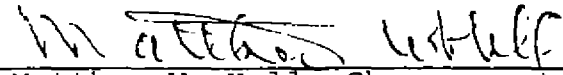
II.


In view of appellant's lack of knowledge that the fire had been set, of appellant's previous compliance with Agency's no-burning order, and of appellant's no-burning order to his own employees, the assessment of the maximum allowable penalty is excessive.


Therefore, the Pollution Control Hearings Board sustains respondent in its Notice of Violation No. 3371 against appellant but remands the matter to the respondent for a reduction in the civil penalty imposed, to an amount more commensurate with the circumstances.

DONE at Olympia, Washington, this first day of June, 1971.

POLLUTION CONTROL HEARINGS BOARD


Matthew W. Hill, Chairman


James T. Sheehy, Member


Walt Woodward, Member